

### Appointment on Conference Committee.

The Chair, Lieutenant Governor Edgar E. Witt, appointed Senator Moore to succeed Senator Oneal, resigned, on Conference Committee on H. B. No. 7.

### Adjournment.

On motion of Senator Rawlings the Senate at 12:07 p. m., adjourned until 10 o'clock a. m., Thursday.

## APPENDIX.

### Petitions and Memorials.

(Card of Thanks.)

The family of  
I. W. CULP

will hold in grateful remembrance your kind expression of sympathy.

### TENTH DAY.

Senate Chamber,  
Austin, Texas,  
October 25, 1934.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll disclosed a quorum, the following Senators being present:

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

Absent—Excused.

Fellbaum.

Prayer by the Chaplain.

On motion of Senator Woodward, further reading of the Journal was dispensed with.

### Committee Reports.

(See Appendix.)

### Bills and Resolutions.

#### House Bill No. 6.

The Chair laid before the Senate on its second reading the following bill:

H. B. No. 6, A bill to be entitled "An Act releasing interest and penalties on ad valorem and poll taxes that were delinquent on or before October 1, 1934, due the State, any county, common school district, road district, levee improvement district, water improvement district, water control and improvement district, irrigation district, and other defined subdivisions of the State, provided same are paid on or before January 31, 1935; provided said taxes are paid during the month of February, 1935, with an addition of one per cent (1%) penalty thereon; provided said taxes are paid during the month of March, 1935, with an addition of two per cent (2%) penalty thereon; provided said taxes are paid during the month of April, 1935, with an addition of three per cent (3%) penalty thereon; etc., and declaring an emergency"

The bill was read.

The committee amendment was read.

Senator Redditt moved the adoption of the committee amendment.

The committee amendment was adopted by a viva voce vote.

Senator Redditt sent up the following amendment to H. B. No. 6.

Amend H. B. No. 6 by striking out all below the enacting clause and insert in lieu thereof the following:

Section 1. On and after January 1, 1935, ad valorem taxes shall be assessed and levied in such a way

(1) that such taxes, if entirely paid during the month of October of the year for which such taxes are assessed, will be ninety-seven (97%) per cent of the amount that such taxes would be if paid after the expiration of said year; and

(2) that such taxes, if entirely paid during the month of November of the year for which such taxes are assessed, will be ninety-eight (98%) per cent of the amount that such taxes would be if paid after the expiration of said year; and

(3) that such taxes, if entirely paid during the month of December of the year for which such taxes are assessed, will be ninety-nine

(99%) per cent of the amount that such taxes would be if paid after the expiration of said year.

That if any person shall pay on or before November 30th next succeeding the return of the assessment rolls of the county to the Comptroller of Public Accounts all poll taxes and one-half of the ad valorem taxes imposed by law on him or his property then he shall have until and including 30th day of the succeeding June within which to pay the other one-half of his said ad valorem taxes without penalty or interest thereon during said time.

If said taxpayer after paying one-half of his ad valorem taxes on or before November 30th, as hereinbefore provided, shall fail or refuse to pay on or before June 30th next succeeding said November, the other one-half of his said ad valorem taxes, the penalties on the amount of said unpaid taxes shall accrue thereon as hereinafter set out.

Sec. 2. That all interest and penalties that have accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1934, due the State, any county, common school district, road district, levee improvement district, water improvement district and water control and improvement district, irrigation district and other defined subdivisions of the State (and, subject to the provisions hereinbefore and hereinafter contained, such interest and penalties on delinquent ad valorem and poll taxes due cities, towns and villages, and special school districts, and independent school districts), shall be and the same are hereby released, provided, said ad valorem and poll taxes are paid on or before February 28, 1935, with an addition of one (1%) per cent penalty on said taxes; and shall be and the same are hereby released provided said ad valorem and poll taxes are paid after February 28, 1935, and on or before March 31, 1935, with an addition of two (2%) per cent penalty on said taxes; and shall be and the same are hereby released provided said ad valorem and poll taxes are paid after March 31, 1935, and on or before April 30, 1935, with an addition of four (4%) per cent penalty on said taxes; and shall be and the same are hereby released provided said ad valorem and poll taxes are paid after

April 30, 1935, and on or before May 31, 1935, with an addition of six (6%) per cent penalty on said taxes; and shall be and the same are hereby released provided said ad valorem and poll taxes are paid after May 31, 1935, and on or before June 30, 1935, with an addition of eight (8%) per cent penalty on said taxes; provided, that the penalties prescribed herein shall not be cumulative. It is provided that the provisions hereof shall not apply to cities, towns, and villages, and special school districts, and independent school districts unless and until the governing body of any such city, town or village, or special school district or independent school district finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred, and that an extension of time for the payment of such delinquent ad valorem and poll taxes will promote and accelerate the collection thereof, whereupon such governing body shall adopt a resolution, or ordinance, evidencing such finding, and upon the recording of such findings of fact, the provisions of this Act shall be in full force and effect as to any such city, town or village, or special school district or independent school district. It is expressly and specifically provided that the penalties and interest herein released are released only on delinquent ad valorem and poll taxes and on no other taxes.

Sec. 3. All penalties provided in this Act, shall when collected, be paid to the State and the county, and to the districts, if any, in proportion to the taxes upon which the penalties are collected.

The collector of taxes shall, as of the first day of July of each year for which any State, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls for said year.

Penalties, interest and costs accrued against any land, lots and/or property need not be entered by the tax collector on said list but, in each and every instance, all such penalties, interest and costs shall be and remain a statutory charge with the

same force and effect as if entered on said list, and the tax collector shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him.

Said list shall be made in triplicate and shall be presented to the Commissioners' Court for examination and correction of any errors that may appear, and when so examined and corrected by the Commissioners' Court such lists in triplicate shall be approved by said court, and one copy thereof shall be filed with the county clerk or county auditor and one copy retained and preserved by the collector and one copy forwarded to the Comptroller with his annual settlement reports. Such lists as furnished by the tax collector and corrected by the Commissioners' Court, and the rolls or books on file in the collector's office, or either said list or assessment rolls or books, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder as to regularity of listing, assessing, levying all taxes therein mentioned and reporting as delinquent any real estate whatsoever, and that the amount alleged against said property is a true and correct charge; and, in cases in which the description of the property in said list or assessment rolls or books is not sufficient to identify the same, and of which property there is a sufficient description in the inventories of the assessor's office, then said inventories shall be admissible as evidence of the description of said property.

Sec. 4. It shall be the duty of the Comptroller of Public Accounts to prescribe such forms for tax rolls to be used by the county tax assessors as may make it convenient for the collectors of taxes to note thereon the payment of taxes as provided for in this Act; and to prescribe such forms for receipts, and reports and such other forms for the use of the collectors of taxes as in his opinion may be advisable. This provision is cumulative of all other provisions of the statutes of the state prescribing the duties of the Comptroller of Public Accounts.

Sec. 5. All laws in conflict herewith are hereby repealed.

Sec. 6. The fact that under existing laws it is impossible for many taxpayers to pay delinquent taxes but same could be paid if the penalties thereon were graduated and the interest charges deferred until July 1, 1935, and the further fact that a great increase will be made in the payment of taxes in October, November and December of this year and following years under this Act which will be of advantage to the financial condition of the State, counties and districts, and the further fact that millions of dollars in taxes are now due to the State and its subdivisions for past years by citizens who would meet their obligations to their governments if penalties and interest were omitted for a period of time, creates an emergency and a public necessity requiring that the Constitutional Rule providing that bills shall be read on three several days in each House shall be suspended, and said Rule is hereby suspended and this Act shall take effect from and after its passage, and it is so enacted.

Read and adopted.

Senator Redditt sent up the following amendment to H. B. No. 6:

Amend H. B. No. 6 by striking out all above the enacting clause and insert in lieu thereof the following:

#### A BILL

#### To Be Entitled

An Act to amend Article 7336, Revised Civil Statutes of 1925, as amended by Chapter 117, Acts 42nd Legislature, providing the time when ad valorem and poll taxes shall become due and when they shall become delinquent; providing penalty for non-payment of said taxes and for interest thereon; providing that current ad valorem taxes hereafter paid in full in October or November next succeeding the return of the assessment rolls of the County to the Comptroller of Public Accounts shall be discounted two per cent and that current ad valorem taxes hereafter paid in December of the year next succeeding the return of the assessment rolls of the county to the Comptroller of Public Accounts shall be discounted one per cent; providing for payment of one-half of current ad valorem taxes on or before November 30th

and one-half of same on or before June 30th, both said dates of the year next succeeding the return of the assessment rolls of the county to the Comptroller of Public Accounts, and providing penalty for failure or refusal to pay last one-half; providing for graduated penalty on all current taxes not paid on February 1st, 1935, and on current taxes not paid on February 1st of each year thereafter; and providing for the releasing the interest and penalties on all delinquent ad valorem and poll taxes that were delinquent on or before July 1, 1934 due the State, any county, common school district, road district, levee improvement district, water improvement district and water control and improvement district, irrigation district and other defined subdivisions of the state provided same are paid on or before February 28, 1935 with the addition of (1%) one per cent penalty on said taxes; provided said taxes are paid after February 28, 1935 and on or before March 31, 1935 with an addition of two (2%) per cent penalty on said taxes, and provided said taxes are paid after March 31, 1935, and on or before April 30, 1935, with an addition of four (4%) per cent penalty on said taxes; and provided that said taxes are paid after April 30, 1935, and on or before May 31, 1935, with an addition of six (6%) per cent penalty on said taxes; and provided that said taxes are paid after May 31, 1935, and on or before June 30, 1935, with an addition of eight (8%) per cent penalty on said taxes; and providing further that this act releasing penalties and interest shall not apply to cities, towns, and villages, and special school districts, and independent school districts unless and until the governing body thereof finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred, and that an extension of time for the payment of said ad valorem and poll taxes will accelerate the payment thereof; and such governing body has adopted a resolution, or ordinance, evidencing such finding, and upon the recording of such findings of fact, shall have the authority to put in force and

effect the provisions hereof as to any such city, town, or village, or special school district or independent school district; providing methods of assessing, collecting and distributing penalties and interest; providing form and time delinquent report shall be made by tax collector; providing that the Comptroller of Public Accounts shall prescribe forms for tax rolls to be used by the county tax assessors and collectors of taxes; providing that all laws in conflict with this Act are repealed; and declaring an emergency.

Read and adopted.

The committee report recommending that the bill be not printed was adopted by unanimous consent.

The bill was read second time and passed to third reading.

On motion of Senator Hornsby, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 6 was put on its third reading and final passage by the following vote:

#### Yeas—29.

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

#### Absent—Excused.

Fellbaum.

Read third time and finally passed by the following vote:

#### Yeas—27.

Beck.	Moore.
Blackert.	Murphy.
Collie.	Neal.
Cousins.	Oneal.
DeBerry.	Parr.
Duggan.	Patton.
Greer.	Poage.
Hopkins.	Purl.
Hornsby.	Rawlings.
Martin.	Redditt.

Regan.	Woodruff.
Sanderford.	Woodul.
Small.	Woodward.
Stone.	

Nays—2.

Holbrook. Pace.

Absent—Excused.

Fellbaum.

#### Message From the House.

The Chair recognized the Door-keeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives.  
Austin, Texas, Oct. 25, 1934.  
Hon Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

S. B. No. 1, A bill to be entitled "An Act to aid the Brazos River Conservation and Reclamation District in preparing the necessary plans, specifications and data and in making the necessary surveys, and in acquiring the necessary lands, leases, easements and/or acquittances, and in building or having built and/or co-operating in the building of proper structures, reservoirs and levees suitable for the control, insofar as practicable of the flood waters of the Brazos River watershed, declared to be a public calamity, granting and donating to said District for a period of twenty years all of the State ad valorem taxes in the following counties, which otherwise would go into the General Revenue Fund of the State of Texas, viz.: Austin County, Brazoria County, Burleson County, Fort Bend County, Grimes County, Waller County, Washington County, Brazos County, Milam County, and Robertson County, said grant being contingent upon the receiving by said District of a grant and/or, loan and/or advancement from the United States of America on or before January 1, 1940, of a sum reasonably sufficient to effect the performance of this Act, in no event to be less than \$30,000,000.00, and declaring certain things incidental to said purposes, providing for the segregation of said funds in the State Treasury, providing a penalty for the misapplication of the moneys thus donated, providing for the investment of

available funds, providing for a system of accounting, providing that said tax diversion is based on 1934 valuation and providing that Attorney Generals shall have right to meet with Commissioners' Courts in preparing assessments, etc., and declaring an emergency."

(With amendments.)

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

#### Senate Resolution No. 4.

Senator Moore sent up the following resolution:

Whereas, In order to care for the mail of members of the Senate and to mail out Senate Journals, Tom Burton, Senate messenger, was required to remain at his post for two days following adjournment of the Third Called Session of the Forty-third Legislature; therefore, be it

Resolved, That the said Tom Burton be and he is hereby granted regular compensation for the two days out of the Senate Contingent Fund, Fourth Called Session, Forty-third Legislature.

MOORE.

Read and adopted by a viva voce vote.

#### Senate Bill No. 10.

Senator Poage called up S. B. No. 10.

S. B. No. 10, A bill to be entitled "An Act amending Section 1 of Chapter 130, Acts of the Regular Session of the Forty-third Legislature so as to provide for the issuance of revenue bonds by cities and towns which have assumed the control of the public schools within their boundaries and to amend Section 3 by providing that any bonds issued shall be payable from the net revenues of the project after payment of operating and maintenance charges, and declaring an emergency."

The committee report recommending that the bill be not printed was adopted by unanimous consent.

The bill was read second time and passed to engrossment.

On motion of Senator Poage, the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 10 was put on its third reading and final passage by the following vote:

**Yeas—29.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

**Absent—Excused.**

Fellbaum.

Read third time and finally passed by the following vote:

**Yeas—28.**

Beck.	Pace.
Blackert.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Greer.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.

**Nays—1.**

Collie.

**Absent—Excused.**

Fellbaum.

**Motion to Concur.**

Senator Stone moved that the Senate do concur in House amendment to S. B. No. 1.

**Points of Order.**

Senator DeBerry:

Mr. President, I raise the following point of order on Senate Bill No. 1:

That this bill has not passed the House in that it did not receive the necessary two-thirds vote required by Section 10, of Article VIII, of the Constitution, quoting the House Journal of October 24, pages 84 and

85, showing the vote to be 86 yeas and 44 nays.

The Chair overruled the point of order, stating that to sustain the point of order would be an invasion of the functions of the Courts.

Mr. President, I raise the further point of order on Senate Bill No. 1:

In view of the ruling of the Chair on the point of order just raised and the position of the Chair holding that two-thirds vote is not necessary in this bill, then I take the position that this can be nothing less than an appropriation bill in that the bill itself uses the following terms: "There is hereby donated and granted," which words are clearly synonymous used as they are, with the word "appropriated," which violates Section 6, of Article VIII, of the Constitution, which reads as follows:

"No money shall be drawn from the Treasury, but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assembling of the Sixteenth Legislature."

I offer in support of this, Mr. Speaker, the following ruling from Hon. Claude Pollard, Attorney General of Texas, dated March 9, 1927:

**CONSTITUTIONAL LAW—CONSTRUCTION OF ART. VII, SECTION 10, LEGISLATURE CANNOT RELEASE PERSONS AND PROPERTY FROM TAXES EXCEPT IN CASE OF "GREAT PUBLIC CALAMITY"—WHAT IS "GREAT PUBLIC CALAMITY"—DALLAS, TARRANT, STARR AND TYLER COUNTY BILLS.**

Offices of the Attorney General,  
March 9, 1927.

Honorable W. S. Barron, House of Representatives, Austin, Texas.

Dear Mr. Barron: You, in conjunction with Messrs. O. L. Parrish, J. A. Merritt, A. H. King, J. C. Rogers and J. F. Wallace, Members of the Legislature, submit to me copies of Senate Bills Nos. 228, 229, and 293, pending before the Fortieth Legislature, and ask for my opinion as to the constitutionality of same.

Senate Bill No. 228 has as its purpose the control of the flood waters

of Trinity River, declaring that a great public calamity exists that requires immediate legislation for the protection of the loss of lives and property; it provides for the issuance of bonds and for the release of a portion of the State ad valorem tax within said district not to exceed 23 cents on the \$100 assessed valuation for a period of twenty-five years from and after December 21, 1928. It, by its terms, is offered under the provisions of Section 10, of Article VIII, of the Constitution. The area of the district is not given in the Act, but my information is that it contains several thousand acres of land.

Senate Bill No. 229 is an Act releasing inhabitants of, and property subject to the taxation of Dallas Levee Improvement District, and Dallas County Levee District No. 5, for a period of twenty-five years from payment of ad valorem taxes levied for State purposes, to prevent great public calamities in said district caused by high waters and overflows. By its terms, it is offered under Section 10, of Article VIII, of the Constitution. The boundaries of this district are not given, but my information is that it likewise contains many thousand acres. This Act states that the property included within the districts involved was, in years 1890, 1908, 1913, 1914, 1915, 1916, 1918, 1920, and 1922, greatly damaged by high water and overflows.

Senate Bill No. 259 is an Act making a grant, or donation to Starr County of a portion of the State ad valorem taxes for a period of twenty-five years, to enable said county to construct levees, etc., to protect it from disastrous and calamitous overflows. It recites that there is a large area of the county subjected practically every year to great damage by high waters and overflows, and a grant is made to the county of all State ad valorem taxes in excess of 5 cents on the \$100 valuation. It is not, by its terms, offered under Section 10 of Article VIII, but must be authorized under it, or it must fail.

Senate Bill No. 293 is an Act granting and donating to Tyler County for a period of fifteen years, that part of the State ad valorem tax in excess of 10 cents on the \$100 valuation. It is stated that the county depository failed, and the county lost a large sum of money by

reason of such failure, which has left it in poor financial condition.

These Acts all depend for authority for their enactment upon a proper construction and application of Section 10 of Article VIII of the State Constitution.

I am not unmindful of the matter of public interest involved in the proposed legislation, but with the policy of the law this department has nothing to do. Its functions end with a definite statement of what it conceives to be the law.

The Constitution of 1846, Article VII, Section 27, provided that taxation should be equal and uniform throughout the State, and that all property should be taxed in proportion to its value, "except such property as two-thirds of both Houses of the Legislature may think proper to exempt from taxation."

Section 28 of the same article authorized the Legislature to exempt from taxation \$250 worth of household furniture.

These identical provisions were carried forward into the Constitution of 1861 and of 1866, and appear in both as Article VII, Sections 27 and 28. The provisions in the identical language were also carried forward into the Constitution of 1869, and appear as Article XII, Section 19.

During these years, and prior to the adoption of our present Constitution, the Legislature of Texas exercised rather extensively, its power to exempt property from taxation. This power it had the right to exercise, since no constitutional provision was violated thereby, for in addition to the inherent power of a State Legislature to exempt property from taxation, unless expressly prohibited by the Constitution, the provisions of these Constitutions expressly authorized such exemptions as the Legislature "may think proper." A few of the many instances are given of the exercise of this power.

In 1870, the Legislature incorporated the Washington Fire Engine Company No. 1 of the City of Austin, and expressly provided that its property should be exempt from taxation for State and county purposes. (Gammel's Law, Vol. 6, page 524.) During the same session, an Act was passed authorizing one A. M. Nigs to sell, barter, and trade in goods, wares and merchandise anywhere in the State of Texas, free of any State, county or city incorporation tax. (Gammel's

Law, Vol. 6, page 639.) At the same session, laws were passed exempting from taxation the bonds of the United States, and of the corporation of the City of Houston, and all cemetery lots and the property of all churches, Masonic and Odd Fellows' Lodges and other charitable associations. (Gammel's Laws, Vol. 6, page 76.)

Likewise, the capital stock and property of the International Railroad Company was exempted for five years, from August 5, 1870 (Vol. 6, page 109); and the capital stock and property of the Texas Timber & Prairie Railroad Company for ten years after completion (Vol. 6, page 303); and the property of Gymnastic Association of New Braunfels from State, county, occupation or other taxes (Vol. 6, page 320).

The Legislature of 1873 released all State ad valorem and poll taxes that were at that time, or that might thereafter be assessed against the residents of the counties of Montague, Wise, Parker, Hood, Erath, Hamilton, Lampassas, Burnet, Blanco, Kendall, Bandera, Medina, Frio, McMullen, Duval, Starr and all counties lying west and southwest of same. (Gammel's Law, Vol. 7, page 59.) The basis of the release was stated to be for the purpose of protecting the frontier from the invasion of Indians. The Legislature, of 1875, expressly repealed this law. (Vol. 8, page 382.)

During these years, there were many similar laws, evidencing an unlimited extensive exercise of its power to exempt persons and property from taxation, and many acts making donations to counties, and authorizing counties to issue bonds for the purpose of promotion of railroads construction, etc.

These constitutional provisions and this legislative history constitutes the background of the provision we are called upon to construe.

As a future protection against legislative action as it relates to the matter of taxation and the public funds, there was incorporated into the Constitution of 1876 several provisions which are pertinent in construing the one before us. As to granting of public money to individuals or counties, Article V, Section 51 of the original Constitution of 1876, provided that "the Legislature shall have no power to make any grant, or to authorize the making of

any grant of public money to any individual, association or individual, municipal or other corporation whatsoever; provided, that this shall not be construed as to prevent the grant of aid in case of a public calamity."

This Article was amended in 1912, and the words: "provided, that this shall not be so construed as to prevent the grant of aid in case of public calamity," were eliminated. As amended, this particular article of the Constitution could have but one construction and that is, that the Legislature cannot, in any event, make any grant, or authorize the making of any grant of public money to any individual, association of individuals, municipal, or other corporation whatsoever; even in case of a public calamity.

Therefore, if by any rule of construction, the provisions of these acts might be brought under the terms of this section of the Constitution, there is clearly no authority in the Legislature to enact them. Senate Bill No. 259 relating to Starr County, and Senate Bill No. 293, relating to Tyler County, purport by their very terms to be a grant by the State to those counties a portion of the ad valorem taxes of said counties, constituting the revenues of the State; and therefore, if in truth and in fact, these acts are to be construed as their terms indicate, is the purpose of the law, they must both fall under this provision of the Constitution.

Going further, in an effort to guard against the evils which had existed theretofore, Section 55 of Article III, prohibits the Legislature in any event from releasing, extinguishing, in whole or in part, the indebtedness, liability or obligation of any incorporation, or individual, to the State, or to any county, or other municipal corporation therein.

While this provision of the Constitution does not directly bear upon the question before us, it is important as indicating the extent to which the framers of the Constitution endeavored to go in protecting the public revenues from donation to individuals or municipalities, either directly or through the release of any indebtedness lawfully owing by them to the State. An indebtedness for taxes due to the State, or to the county, or to any other municipal corporation, is a debt under this pro-



vision of the Constitution, which the Legislature has no power to release or extinguish.

Two of the acts in question, expressly purport to have as a basis for authority of enactment, Article VIII, Section 10, which was contained for the first time in the Constitution of 1876, and all of them must stand or fall under it. It is as follows:

"The Legislature shall have no power to release the inhabitants of or property in any county, city or town, from the payment of taxes levied for State, or county purposes, unless in case of great public calamity in such county, city or town, when such release is made by a vote of two-thirds of each House of the Legislature."

This is a prohibitory provision of the Constitution and the proponents of the bills must come within the exception to this express prohibition in the Constitution. It is proposed to enact these bills on the assumption that they come within the exception; in that, the purpose and intent of the Acts is to relieve counties, cities, and towns against a "great public calamity."

The Constitution of 1876, containing this provision, became effective on the 18th day of April of that year. Within less than four months after it became effective, the Legislature of Texas was presented with a situation which required a construction and application of it, arising by reason of a cyclone or storm of wind and rain in Montague County on the 5th day of May of that year. On August 15th, it passed an Act "for the relief of the citizens of Montague County," based upon statements contained in the Act, that the storm had almost entirely destroyed the dwellings, fences, barns, personal property and growing crops of the inhabitants of the county, and based on this "great public calamity" it released the taxes for the years of 1876 and 1877. (Gammel's Laws, Vol. 8, page 1294.)

At the same Session of the Legislature, an Act was passed to "release from taxation the property of certain citizens of Matagorda and Brazoria Counties, located within a certain particular territory, by reason of the calamitous storm upon the coast in September, 1875, and the release was from taxes for 1876

only. (Gammel's Laws, Vol. 8, page 1295.)

At the same Session of the Legislature, the persons and property of the town of Indianola, in Calhoun County, were exempt from taxation for the year of 1876 by reason of the same storm. (Vol. 8, page 1296.)

These Acts of the Legislature, coming within so short a time after the adoption of the Constitution, clearly indicate the intent of the provision under consideration, as understood by the Legislature. It is noted that the "great public calamities" involved where storms and cyclones, unexpectedly occurring, disastrously affecting whole communities, and that the release from taxation was for only two years for the purpose of enabling those who had been injured by the calamity to recover from its disastrous effects.

The Twenty-eighth Legislature, in 1903, passed an Act releasing the town of Goliad from State and county taxes for the year of 1902 by reason of a cyclone of most unusual and terrific violence, resulting in great loss of life and the destruction of property. The same Legislature donated to Brazoria County the State ad valorem and a portion of the occupation taxes for the period of two years, on account of the terrific and destructive hurricane of 1900.

The same Legislature passed an Act donating taxes to the City of Galveston by reason of the same great public calamity; this donation being for a period of fifteen years.

The Thirty-fifth Legislature passed an Act remitting State taxes to the City of Paris in Lamar County, for five years, by reason of a calamitous fire, which destroyed all municipal buildings, including the courthouse, schoolhouses, etc., churches and hundreds of homes, and the entire business district.

The same Legislature remitted a portion of the State taxes to the Garrison Independent School District for a period of five years, by reason of a calamitous fire which destroyed all of the buildings and equipment of the district.

Each of these Acts clearly came within the provisions of the Constitution under consideration, because there was presented to the Legislature a situation which disclosed that a great public calamity had occurred, calling for the exercise of its power

for the releasing of persons and property from taxes.

It is significant that in none of these instances was the release granted for any considerable time, except that of Galveston, and authority to grant relief to it cannot be disputed in view of the great public calamity, relief against which was sought.

Under the provisions of an entirely separate section of the Constitution, viz.: Section 8, of Article XI, which authorizes the Legislature to grant aid to counties and cities on the Gulf Coast, several Acts have been passed remitting State and county taxes, to-wit: that of the Thirty-fifth Legislature to Corpus Christi; that of the Thirty-sixth Legislature to Aransas Pass; that of the Thirty-sixth Legislature to Rockport; that of the Thirty-sixth Legislature to Port Lavaca, and of the same Legislature to Freeport, and of the Thirty-seventh Legislature to Corpus Christi, but the authority to act in these instances is based upon a different constitutional grant.

In addition to the Acts above mentioned, the Thirty-eighth Legislature passed an Act releasing State taxes to the inhabitants of Hidalgo County for twenty-five years, and of Wharton and Matagorda Counties; and the Thirty-ninth Legislature passed an Act remitting taxes to Cameron and Willacy Counties. In the last mentioned Act, the authority is based upon the provision of the Constitution authorizing the granting of relief to counties upon the Gulf Coast.

In the Act relating to Wharton County, and a part of Matagorda County, the authority is based upon Section 10 of Article VIII, and likewise, any authority for passing the Act relating to Hidalgo County must be based upon the same provision of the Constitution, and in fact, by its very terms, is so based.

As to Hidalgo County, it was stated in the Act that during the preceding year, there had been a calamitous overflow, whereby great property damage was done and many inhabitants drowned.

The above constitutes the legislative history under Article VIII, Section 10, of the Constitution, as well as under Article II, Section —. With the exception of the relief granted to Wharton and Hidalgo Counties, the Legislature has never exercised any

power under Article VIII, Section 10, except to relieve against a "great public calamity" that had already occurred. I refrain from discussing the two exceptions to this history, as they are not before me.

A proper conclusion, of course, depends on what is meant by the words: "great public calamity." "Calamity" is defined to be "any occurrence, especially when sudden and unexpected, that causes great or widespread distress, trouble or affliction to individuals, or to the community, as the failure of crops, an earthquake, the devastation of war or plague, or an extensive fire or flood." (Corpus Juris, Vol. 9, page 1116.) It is further defined as: "any great misfortune, or cause of misery—generally applied to events or disasters which produce extensive evil, either to communities or individuals." (Webster's Revised Unabridged Dictionary.)

I think the words were used as indicated in the construction given them by the Legislature of 1876, and succeeding ones, except those of recent years, as meaning "sudden and unexpected events which produce widespread distress or loss." I do not think it was ever intended by the framers of the Constitution that permanent existing conditions, although unfortunate, and although occasionally causing loss of property, were intended to be corrected by the release of the property located therein, from the payment of taxes, I do not believe that the framers of the Constitution intended to grant to the Legislature the power to release property from taxes during long periods of future time, solely by reason of the fact that the property might be located at some place where it was subject to overflows from year to year. If this is the correct interpretation of the Constitution, there could scarcely be found, in certain portions of this State, a single county which would not have the right to have its inhabitants and property, within certain defined territories of it, released from taxes. There are in many counties in this State, land so located as that it is subject to periodical overflows, creating great loss of property, but this permanent situation of property in relation to streams which makes it subject to overflow, is not such an occurrence, or event, or happening as could be

brought within the term: "great public calamity." What is the "great public calamity" relief from which is sought to be given in the Acts presented? In one of the bills (Senate Bill No. 229), there is the statement that during several years, the last being five years ago, certain property overflowed and great damage was done; in two others (Senate Bills Nos. 228 and 259), that a large area of productive and cultivated land is subject to damage by overflow; and in the other (Senate Bill No. 293), that the county depository has failed.

Not being influenced by the consideration of public good which might be accomplished by legislation, I am of the opinion that none of these situations come within the provisions of the Constitution, that gives the Legislature power to release persons and property from taxation, in case of "great public calamity."

Under the provision of the Constitution the Legislature would not have the power to release the inhabitants of, or property in any county, city or town, from taxes, except to grant relief for a calamity that has already occurred, and would not have the power under this provision of the Constitution, to release from taxes so as to prevent a possible occurrence of a great public calamity in the future. The provision is one to cover emergencies, sudden and unexpected occurrences of events, and disasters which produce great and widespread distress and loss to whole communities.

My attention has been directed to the decision of the Supreme Court in the case of *Aransas Pass vs. Keeling*, 112 Texas, 339, as an authority for this legislation. The Act under consideration in this case granted to Aransas County the ad valorem taxes for a period of twenty years. This Act, as heretofore indicated, was passed under a provision of the Constitution entirely different from the one we are now considering (Section 8, Article II), which provided that as the counties and cities on the Gulf Coast were subject to calamitous overflows, the Legislature was expressly authorized to aid, either by donation of the domain, or in such other mode as may be provided by law, the construction of sea walls, etc. There is nothing involved in

this case at all pertinent to a construction of Section 10, Article VIII.

It is true that the court considered the facts of the particular case before it, in order to determine as to whether or not it was authorized under the following provision of the Constitution:

"The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is specially authorized to aid \* \* \* the construction of sea walls, etc."

The court held that the remission of a portion of the State ad valorem taxes upon the property of San Patricio County, which bordered upon the Gulf Coast, was authorized under this section of the Constitution. It is to be noted, however, that this constitutional provision expressly states the location of the counties and cities that might receive aid, and the reason why; that is, counties and cities on the Gulf Coast, and because they were subject to calamitous overflows.

The court referred to Article VIII, Section 10, of the Constitution, as being a related provision, authorizing relief in certain cases, but there is nothing in this opinion which would indicate that the court thought that because a county or city in other portions of the State might be subject to calamitous overflow, it would come within the provisions of Section 10, Article VIII, authorizing a release of taxes in case of a great public calamity.

The right of a State Legislature to limit its power of taxation, and to exempt persons and property from taxation, is inherent, unless there is a prohibition in the Constitution. In our State it has been uniformly held that this power is not unlimited, and that under the provision that "taxation shall be equal and uniform," the Legislature has no power to exempt any person or property, unless it is expressly authorized so to do by some provision of the Constitution.

We are here confronted with an express prohibition against release from taxation, and the contemporaneous construction of the provision by the Legislature of the State, as we have heretofore indicated, is not such as to justify the view that it was ever

intended to be applied to permanent existing situations, as attempted in the Acts before us, but only a temporary relief against widespread disaster by reason of an unexpected emergency.

My attention has also been directed to Article XVI, Section 59, which relates to the conservation and development of the natural resources of the State, including the control, storing, preservation, and distribution of its storm and flood waters, and the creation of conservation and reclamation districts; and it is suggested that the provision that authorizes the Legislature to pass "all such laws as may be appropriate thereto" would justify the passage of the Acts under consideration. I do not believe this provision of the Constitution can be so construed.

The purposes of the two provisions are entirely different. Two of the Acts under consideration expressly purport to be justified under Article VIII, Section 10, as relief against great public calamities. The purpose of Article XVI, Section 59, is the organization of districts and the issuance of bonds to provide for the use of storm and flood waters; for irrigation and the reclamation and irrigation of arid lands; for the reclamation and drainage of overflowed lands and the conservation and development of forests, which is an entirely different purpose from that of granting relief by reason of calamitous overflows. One involves progressive development of the State by the preservation of its natural resources; the other involves relief from disasters by reason of a great public calamity.

While the Legislature has never been put to the necessity of seeking constitutional authority for its enactments, specific prohibitions against the exercise of power by it, must be construed strongly against its exercise, and its right to act must come clearly within the provisions of an exception to the express prohibition. The wisdom or policy of a law is entirely within its cognizance, but the fact that the constitutional provision under consideration requires, for the exercise of its power, a vote of two-thirds of each House, clearly indicates that the people demanded that an undoubted right to come within the exception should exist.

As to how far the courts will go in determining as to whether or not

the Legislature has exceeded its power in passing upon facts necessary to its exercise, is quite uncertain.

It has been suggested that when the Legislature acts in the matters under consideration, that the courts would have no authority to go behind the enactment to determine as to whether or not there existed a great public calamity, authorizing the law.

I do not agree with this contention, and am of the opinion that if, after the Legislature enacts the bills under consideration, it should appear in any contest in the courts that the necessary facts did not exist to authorize their enactment, the court would hold them invalid, and would consider the facts to determine the issue. Otherwise, the Legislature might, at any time, declare that in any certain city, town or county, a great public calamity existed, and release the persons and property therein from taxation. The fact that the Constitution requires a two-thirds vote, in order to pass the law, does not militate I think against the principle that the Act of the Legislature in passing the law does not close the door of an attack upon it for failure of conditions that would authorize its enactment.

In view of the public interest involved, I have given most careful consideration to the question submitted, and have conferred freely with, and had the briefs of, attorneys interested for their clients in a contrary view, but I am convinced that neither of these Acts may be enacted by the Legislature, without a violation of the constitutional provision.

Respectfully submitted,

Attorney General of Texas.

When this bill was placed on third reading and final passage, September 18, 1934, which is now Senate Bill No. 1, the vote was 13 yeas and 12 nays.

The point of order was raised that a two-thirds majority vote was necessary to pass a bill of this kind, it being contended by the opponents that the bill was governed by Section 10, of Article VIII, of the Constitution, which authorizes the release of ad valorem taxes in cases of great public calamity, and provides that a two-thirds majority vote shall be necessary. The proponents con-

tended that a majority only was required, and recited for authority the ruling of the Speaker of the House, quoted in the House Journal of February 4, 1925, page 365.

In overruling the point of order, the Speaker of the House relied upon an opinion of the Attorney General, dated January 30, 1925, signed by L. C. Sutton, Assistant Attorney General, and approved by Dan Moody, Attorney General.

The Attorney General held that a two-thirds majority was not necessary, and cited for his authority the case of *Aransas Pass et al. vs. Keeling*, 112 Texas, 339. The *Aransas Pass* case is not in point. The Act the Legislature passed upon in that case was enacted under Section 8, of Article XI, of the Constitution, which gives special authority to the Legislature to aid counties and cities on the Gulf Coast, and does not require a two-thirds vote as does Section 10, of Article VIII.

Since that opinion was rendered, and subsequent to the opinion of the Attorney General above referred to, the Honorable Claude Pollard, Attorney General, on March 9, 1927, rendered an opinion construing several measures similar to the one now under consideration (Senate Bill No. nine (9), in which he held that such measures could not be enacted under the "calamity provision" of the Constitution. (Section 10, Article VIII.) This is a very learned opinion, and it deals with the subject at great length. (Copy of the opinion is attached hereto.)

During the debate on this bill in the Senate, the proponents referred to what is known as the *Hidalgo County Case* (*Martin vs. Hidalgo County*, 271 S. W., 436) sustaining their position that such measures may be passed under the "calamity provision" of the Constitution. The case does not so hold. It simply said that legislative determination of the existence of great public calamity is conclusive on courts.

The Members of the Legislature should be informed as to the contents of the Pollard opinion, as well as the points of order raised in the Senate, as a guide to an intelligent vote on this measure.

The State can extend financial aid to counties, cities or districts only in the following ways:

1. A grant of public money under Section 51, of Article III, in case of public calamity. But note that this would come within Section 6, of Article VIII, which prohibits the drawing of any money from the Treasury except by specific appropriations for not longer than two years.

2. Relief by the State to counties and cities on the Gulf Coast is authorized by Section 8, of Article XI. The Supreme Court of Texas held in the case of *City of Aransas Pass vs. Keeling*, 122 Texas, 339, that the donation of taxes to *Aransas Pass* was justified under this Section 8, of Article XI, and being thus authorized was not limited by Section 6, of Article VIII, that there must be an appropriation for only two years. Note that this case does not hold that a grant under Section 51, of Article III, would be free from Section 6, of Article VIII.

3. Release of taxes under Section 10, of Article VIII, in case of a public calamity. Under the specific terms of the constitutional provision the vote must be by two-thirds of each House.

4. The use of State money for governmental purposes through a county or governmental agency. In the case of *Road District vs. Allred*, 68 S. W. (2d), 164, it was held that the State could not extend aid to a road district to reimburse it for bond money which was not spent on State highways. This was an opinion of the Commission of Appeals and the opinion was adopted by the Supreme Court. Relief under this power depends upon what the court construes to be a governmental purpose. Since Section 59-a, of Article XVI, authorizes the creation of water conservation, etc., districts, and specifically provides for district bonds, it is difficult to see how the implied power of the State to pay the cost could be justified. The district financing would seem to preclude State financing.

See also *Jones vs. Alexander*, 122 Texas, 328, Com. App., opinion by Sharp, adopted by Supreme Court. "The Constitution prohibits the Legislature from appropriating public money to other than strictly governmental purposes."

The proponents of a bill to "donate" taxes for a number of years say that this is not a release under Section 10, of Article VIII. But this

is a very technical attitude for the State never, in fact, have the taxes been paid into the State Treasury, and for that reason the action is really a release and not a donation. Is it possible that the Supreme Court, by saying in the Aransas Pass Case that the action was a "donation" under Section 8, of Article XI, clouded the issue? If so, then, a "donation" can be authorized only under that section of the Constitution in which the very word "donation" is used. It is significant that the word "donation" is used only in Section 8, of Article XI, and is not used in Sections 50, 51, 52, 53, etc., of Article III, but, instead, the terms "grant of public money" are used. In Section 10, of Article VIII, "release" of taxes is the expression used.

If it is brought to the attention of proponents of so-called donations of taxes (not under Section 8 of Article X), that such donations can last for only two years under Section 6 of Article VIII, and then only for public calamity, they might be more cautious.

#### DeBERRY.

The Chair overruled the second point of order, stating that to sustain the point of order would be an invasion of the functions of the Courts.

The motion to concur prevailed by the following vote:

#### Yeas—19.

Beck.	Patton.
Collie.	Poage.
Cousins.	Purl.
Holbrook.	Rawlings.
Hopkins.	Sanderford.
Hornsby.	Stone.
Martin.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.
Parr.	

#### Nays—6.

Blackert.	Pace.
DeBerry.	Regan.
Moore.	Small.

#### Absent.

Duggan.	Murphy.
Greer.	Redditt.

#### Absent—Excused.

Fellbaum.

#### House Bill No. 6.

#### Motion to Reconsider.

Senator Oneal made a motion to reconsider the vote by which H. B. No. 6 was passed.

The motion to reconsider prevailed by viva voce vote.

Senator Oneal sent up the following amendment:

Amend H. B. No. 6, as amended, by adding to Section One (1) at the end thereof the following:

"That if any person shall pay on or before November 30th next succeeding the return of the assessment rolls of the county to the Comptroller of Public Accounts all poll taxes and one-half of the ad valorem taxes imposed by law on him or his property then he shall have until and including 30th day of the succeeding June within which to pay the other one-half of his said ad valorem taxes without penalty or interest thereon during said time.

"If said taxpayer after paying one-half of his ad valorem taxes on or before November 30th, as hereinbefore provided, shall fail or refuse to pay on or before June 30th next succeeding said November, the other one-half of his said ad valorem taxes, the penalties on the amount of said unpaid taxes shall accrue thereon as hereinafter set out."

#### ONEAL.

The amendment was adopted.

H. B. No. 6 was finally passed, as amended, by the following vote:

#### Yeas—26.

Beck.	Oneal.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Greer.	Redditt.
Hopkins.	Regan.
Hornsby.	Sanderford.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.

#### Nays—3.

Holbrook.	Small.
Pace.	

#### Absent—Excused.

Fellbaum.

**Adjournment.**

On motion of Senator Woodward, the Senate, at 10:55 o'clock a. m., adjourned until 10:00 o'clock a. m., Friday.

**APPENDIX.****Committee on Engrossed Bills.**

Committee Room,  
Austin, Texas, Oct. 24, 1934.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 11 carefully examined and compared and find same correctly engrossed.

REGAGN, Chairman.

Committee Room,  
Austin, Texas, Oct. 25, 1934.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 10 carefully examined and compared and find same correctly engrossed.

REGAN, Chairman.

**Committee Reports.**

Committee Room,  
Austin, Texas, Oct. 24, 1934.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Contingent Expenses, to whom was referred S. C. R. No. 4, as follows:

"Whereas, There is not now within a reasonable distance of the Capitol an eating establishment adequately operated to take care of the needs of the Members of the Legislature and other employees of the State Government; and,

"Whereas, There exists a very definite need for a coffee shop within the Capitol Building for the convenience of such Members of the Legislature and other governmental employees; now, therefore, be it

"Resolved, by the Senate of Texas, the House of Representatives concurring. That the State Board of Control be instructed to select and set aside a suitable location, and install or cause to be installed either in the basement of the Capitol Building or elsewhere, such coffee shop, and that said coffee shop be either leased to a private interest for operation or that it be operated by the State for the benefit of the State, and that the

cost of installation of the same be paid out of the contingent fund of the Legislature; and, be it further

"Resolved, That the said coffee shop be prepared and got in readiness for opening not later than the convening of the Regular Session of the Forty-third Legislature, which meets on January 8, 1935; be it further

"Resolved, That the Secretary of the Senate be and is hereby instructed to present a copy of this resolution to the Board of Control with the request that it be given immediate attention."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

WOODRUFF, Chairman.

**ELEVENTH DAY.**

Senate Chamber,  
Austin, Texas,  
October 26, 1934.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll disclosed a quorum, the following Senators being present:

Beck.	Oneal.
Blackert.	Pace.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Greer.	Redditt.
Hopkins.	Regan.
Hornsby.	Sanderford.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodward.
Neal.	

**Absent—Excused.**

Fellbaum.	Small.
Holbrook.	Woodul.
Parr.	

Prayer by the Chaplain.

On motion of Senator Woodward, further reading of the Journal was dispensed with.

**Petitions and Memorials.**

(See Appendix.)

**Committee Reports.**

(See Appendix.)